

COUNTY TAX AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: _____

LONG TITLE**General Description:**

This bill authorizes a county of the first class beginning July 1, 2011, and ending June 30, 2016, to levy an energy sales and use tax, and authorizes a county of the first class, beginning July 1, 2011, and ending June 30, 2016, to levy a telecommunications license tax.

Highlighted Provisions:

This bill:

- defines terms;
- authorizes a county of the first class, under certain circumstances, to levy an energy sales and use tax;
- authorizes a county of the first class, under certain circumstances, to levy a telecommunications license tax;
- amends related tax provisions; and
- makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



11-26-1, as last amended by Laws of Utah 2003, Chapter 253

59-1-302, as last amended by Laws of Utah 2009, Chapter 212

59-1-401, as last amended by Laws of Utah 2010, Chapter 233

59-1-1402, as last amended by Laws of Utah 2010, Chapter 233

59-12-107, as last amended by Laws of Utah 2009, Chapter 212

59-12-108, as last amended by Laws of Utah 2008, Chapters 286, 382, and 384

59-12-128, as last amended by Laws of Utah 2009, Chapter 212

72-7-102, as last amended by Laws of Utah 2008, Chapter 382

72-7-108, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

17-50-601, Utah Code Annotated 1953

17-50-602, Utah Code Annotated 1953

17-50-603, Utah Code Annotated 1953

17-50-604, Utah Code Annotated 1953

17-50-605, Utah Code Annotated 1953

17-50-606, Utah Code Annotated 1953

17-50-607, Utah Code Annotated 1953

17-50-608, Utah Code Annotated 1953

17-50-609, Utah Code Annotated 1953

17-50-610, Utah Code Annotated 1953

17-50-701, Utah Code Annotated 1953

17-50-702, Utah Code Annotated 1953

17-50-703, Utah Code Annotated 1953

17-50-704, Utah Code Annotated 1953

17-50-705, Utah Code Annotated 1953

17-50-706, Utah Code Annotated 1953

17-50-707, Utah Code Annotated 1953

17-50-708, Utah Code Annotated 1953

17-50-709, Utah Code Annotated 1953

17-50-710, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **11-26-1** is amended to read:

11-26-1. Definitions -- Ceiling on local charges based on gross revenues of public service provider.

(1) As used in this chapter:

(a) "Local charge" means one or more of the following charges paid by a public service provider to a county or municipality:

(i) a tax;

(ii) a license;

(iii) a fee;

(iv) a license fee;

(v) a license tax; or

(vi) a charge similar to Subsections (1)(a)(i) through (v).

(b) "Municipality" means:

(i) a city; or

(ii) a town.

(c) "Public service provider" means ~~[a person engaged in the business of supplying taxable]~~ an energy supplier as defined in [Section] Sections 10-1-303 and 17-50-603.

(2) A county or a municipality may not impose upon, charge, or collect from a public service provider local charges:

(a) imposed on the basis of the gross revenues of the public service provider;

(b) derived from sales, use, or both sales and use of the service within the county or municipality; and

(c) in a total amount that is greater than 6% of gross revenues.

(3) The determination of gross revenues under this section may not include:

(a) the sale of gas or electricity as special fuel for motor vehicles; or

(b) a local charge.

(4) This section may not be construed to:

(a) affect or limit the power of counties or municipalities to impose sales and use taxes under:

(i) Title 59, Chapter 12, Sales and Use Tax Act; ~~[or]~~

(ii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or
(iii) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act; or
(b) grant any county or municipality the power to impose a local charge not otherwise provided for by law.

(5) This section takes precedence over any conflicting provision of law.

Section 2. Section **17-50-601** is enacted to read:

Part 6. County Energy Sales and Use Tax Act

17-50-601. Title.

This part is known as the "County Energy Sales and Use Tax Act."

Section 3. Section **17-50-602** is enacted to read:

17-50-602. Purpose and intent.

The Legislature finds that:

- (1) the energy industry has previously been highly regulated and monopolistic;
- (2) counties have historically raised general fund revenues by collecting franchise and business license revenues from the energy industry;
- (3) substantial restructuring of the energy industry has created an opportunity for increased competition within the energy industry;
- (4) the restructuring of the energy industry has diminished the effectiveness and fairness of the revenues collected by counties;
- (5) to provide for a stable revenue source for counties and to create a more competitive environment for the energy industry, it is necessary to enact taxing authority for counties that accomplishes those goals; and
- (6) this part does not alter or affect a county's authority to grant or regulate franchises, or to control county streets, highways, or other property.

Section 4. Section **17-50-603** is enacted to read:

17-50-603. Definitions.

As used in this part:

- (1) "Commission" means the State Tax Commission.
- (2) "Contractual franchise fee" means:
 - (a) a fee;
 - (i) provided for in a franchise agreement; and

121 (ii) that is consideration for the franchise agreement; or

122 (b) (i) a fee similar to Subsection (2)(a); or

123 (ii) any combination of Subsections (2)(a) and (b).

124 (3) "County" means a county of the first class.

125 (4) (a) "Delivered value" means the fair market value of the taxable energy delivered
126 for sale or use in the unincorporated county and includes:

127 (i) the value of the energy itself; and

128 (ii) any transportation, freight, customer demand charges, service charges, or other
129 costs typically incurred in providing taxable energy in usable form to each class of customer in
130 the county.

131 (b) "Delivered value" does not include the amount of a tax paid under:

132 (i) Title 59, Chapter 12, Part 1, Tax Collection;

133 (ii) Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act; or

134 (iii) this part.

135 (5) "De minimis amount" means an amount of taxable energy that does not exceed the
136 greater of:

137 (a) 5% of the energy supplier's estimated total Utah gross receipts from sales of
138 property or services; or

139 (b) \$10,000.

140 (6) "Energy supplier" means a person supplying taxable energy, except that the
141 commission may by rule exclude from this definition a person supplying a de minimis amount
142 of taxable energy.

143 (7) "Franchise agreement" means:

144 (a) a franchise; or

145 (b) an ordinance, a contract, or an agreement granting a franchise.

146 (8) "Franchise tax" means:

147 (a) a franchise tax;

148 (b) a tax similar to a franchise tax; or

149 (c) any combination of Subsections (8)(a) and (b).

150 (9) "Person" is as defined in Section 59-12-102.

151 (10) "Taxable energy" means gas and electricity.

Section 5. Section **17-50-604** is enacted to read:

17-50-604. County may levy tax -- Rate -- Imposition or repeal of tax -- Tax rate change -- Effective date -- Notice requirements -- Exemptions.

(1) (a) Except as provided in Subsections (3), (4), and (5), a county, beginning July 1, 2011, and ending June 30, 2016, may levy a county energy sales and use tax on the sale or use of taxable energy within the unincorporated county:

(i) by ordinance as provided in Section 17-50-605; and

(ii) of up to 6% of the delivered value of the taxable energy.

(b) A county energy sales and use tax imposed under this part may be in addition to any sales and use tax imposed by the county under Title 59, Chapter 12, Sales and Use Tax Act.

(2) (a) For purposes of this Subsection (2):

(i) "Annexation" means an annexation to a county under Chapter 2, Part 2, County Annexation.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) If in accordance with Subsection (1)(a) a county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (2)(b)(ii) from the county.

(ii) The notice described in Subsection (2)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (2)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (2)(b)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (2)(b)(ii)(A), the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after July 1, 2011, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (2)(c)(ii) from the annexing county as defined in Section

17-2-202.

(ii) The notice described in Subsection (2)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (2)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (2)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (2)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (2)(c)(ii)(A).

(3) A sale or use of electricity within the unincorporated county is exempt from the tax authorized by this section if the sale or use is:

(a) made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy source, as designated in the tariff by the Public Service Commission of Utah; and

(b) for an amount of electricity that is:

(i) unrelated to the amount of electricity used by the person purchasing the electricity under the tariff described in Subsection (3)(a); and

(ii) equivalent to the number of kilowatt-hours specified in the tariff described in Subsection (3)(a) that may be purchased under the tariff described in Subsection (3)(a).

(4) A county may not levy a county energy sales and use tax within any portion of the county that is within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act.

(5) (a) Subject to the requirements of Subsection (5)(b), a franchise agreement between a county and an energy supplier may contain a provision that:

(i) requires the energy supplier by agreement to pay a contractual franchise fee that is otherwise prohibited under this part; and

(ii) imposes the contractual franchise fee on or after the day on which this part is:

(A) repealed, invalidated, or the maximum allowable rate provided in Section 17-50-605 is reduced; and

(B) not superseded by a law imposing a substantially equivalent tax.

(b) A county may not charge a contractual franchise fee under the provisions permitted by Subsection (5)(a) unless the county charges an equal contractual franchise fee or a tax on all

energy suppliers.

Section 6. Section **17-50-605** is enacted to read:

17-50-605. County energy sales and use tax ordinance provisions.

Each county energy sales and use tax ordinance under Subsection 17-50-604(1) shall include:

(1) a provision imposing a tax on every sale or use of taxable energy made within the unincorporated county at a rate determined by the county that is up to 6% of the delivered value of the taxable energy;

(2) provisions substantially the same as those required by Title 59, Chapter 12, Part 1, Tax Collection, as they relate to sales and use tax, except that:

(a) the tax shall be calculated on the delivered value of the taxable energy to the consumer;

(b) an exemption is not allowed from a tax imposed under this part for the sale or use of taxable energy that is exempt from the state sales and use tax under Title 59, Chapter 12, Part 1, Tax Collection, except that the county shall include in its ordinance an exemption for:

(i) the sales and use of aviation fuel, motor fuel, or special fuel subject to taxation under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

(ii) the sales and use of taxable energy that the county is prohibited from taxing under federal law or the Constitution of the United States or the Utah Constitution;

(iii) the sales and use of taxable energy purchased or stored in the state for resale;

(iv) the sales or use of taxable energy to a person if the primary use is for use in compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

(v) taxable energy brought into the state by a nonresident for the nonresident's own personal use or enjoyment while within the state, except taxable energy purchased for use in the state by a nonresident living or working in the state at the time of purchase;

(vi) the sales or use of taxable energy for any purpose other than use as a fuel or energy; and

(vii) the sale of taxable energy for use outside a county imposing a county energy sales and use tax;

(c) the ordinance may provide for an exemption from the county energy sales and use

tax under this part for customers who, as of July 1, 2011, were being supplied electrical energy by a supplier other than the county if:

(i) the county is a generator of electrical energy for customers within its unincorporated areas; and

(ii) the county is unable to generate electrical energy for the customer;

(d) the name of the county as the taxing agency shall be substituted for that of the state when necessary for purposes of this part; and

(e) an additional license to collect the tax is not required if one has been issued under Section 59-12-106;

(3) a provision that, on or before the effective date of the ordinance, the county shall enter into a contract with the commission to have the commission perform all functions related to the administration or operation of the ordinance, except that a county may collect the county energy sales and use tax directly as provided in Subsection 17-50-607(3);

(4) a provision that:

(a) except as provided under Subsection (4)(b), the sale, storage, use, or other consumption of taxable energy is exempt from the tax due under the ordinance if the delivered value of the taxable energy has been subject to a county energy sales or use tax under an ordinance enacted in accordance with this part by another county in this state; and

(b) the county shall be paid the difference between the tax paid to another county as described in this section and the tax that would otherwise be due under the ordinance if the tax due under the ordinance exceeds the tax paid to another county; and

(5) a provision providing that the ordinance adopts by reference any amendments to the provisions of Title 59, Chapter 12, Part 1, Tax Collection, that relate to levying or collecting a county energy sales and use tax.

Section 7. Section **17-50-606** is enacted to read:

17-50-606. Rules for delivered value and point of sale.

(1) The delivered value of taxable energy under this part shall be established pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) The rules made by the commission under Subsection (1) shall:

(a) provide that an arm's length sales price for taxable energy sold or used by a

taxpayer in the county is the delivered value, unless the sales price does not include some portion of the taxable energy or component of delivered value;

(b) establish one or more default methods for determining the delivered value for each customer class one time per calendar year on or before January 31 for taxable energy when the commission determines that the sales price does not accurately reflect delivered value; and

(c) provide that for purposes of determining the point of sale or use of taxable energy, the location of the meter is normally the point of sale or use unless the taxpayer demonstrates that the use is not in an unincorporated area of a county imposing the county energy sales and use tax.

(3) In establishing a default method under Subsection (2)(b), the commission:

(a) shall take into account quantity discounts and other reductions or increases in value that are generally available in the marketplace for various grades or types of property and classes of services; and

(b) may consider:

(i) generally applicable tariffs for various classes of utility services approved by the Public Service Commission or other governmental entity;

(ii) posted prices;

(iii) spot-market prices;

(iv) trade publications;

(v) market data; and

(vi) other information and data prescribed by the commission.

Section 8. Section 17-50-607 is enacted to read:

17-50-607. Administration, collection, and enforcement of taxes by commission -- Distribution of revenues -- Charge for services -- Collection of taxes by county.

(1) Except as provided in Subsection (3), the commission shall administer, collect, and enforce the county energy sales and use tax from energy suppliers according to the procedures established in:

(a) Title 59, Chapter 1, General Taxation Policies; and

(b) Title 59, Chapter 12, Part 1, Tax Collection, except for Sections 59-12-107.1 and 59-12-123.

(2) (a) Except as provided in Subsections 17-50-604(5) and 17-50-605(5), the

commission shall pay a county the difference between:

(i) the entire amount collected by the commission from the county energy sales and use tax authorized by this part based on:

(A) the point of sale of the taxable energy if a taxable sale occurs in an unincorporated area of a county that imposes a county energy sales and use tax as provided in this part; or

(B) the point of use of the taxable energy if the use occurs in an unincorporated area of a county that imposes a county energy sales and use tax as provided in this part; and

(ii) the administration fee charged in accordance with Subsection (2)(c).

(b) In accordance with Subsection (2)(a), the commission shall transfer to the county monthly by electronic transfer the revenues generated by the county energy sales and use tax levied by the county and collected by the commission.

(c) (i) The commission shall charge a county imposing a county energy sales and use tax a fee for administering the tax at the percentage provided in Section 59-12-206, except that the commission may not charge a fee for taxes collected by a county under Subsection (3).

(ii) The fee charged under Subsection (2)(c)(i) shall be:

(A) deposited in the Sales and Use Tax Administrative Fees Account; and

(B) used for sales tax administration as provided in Subsection 59-12-206(2).

(3) An energy supplier shall pay the county energy sales and use tax revenues it collects from its customers under this part directly to each county in which the energy supplier has sales of taxable energy if:

(a) the county is the energy supplier; or

(b) (i) the energy supplier estimates that the county energy sales and use tax collected annually by the energy supplier from its Utah customers equals \$1,000,000 or more; and

(ii) the energy supplier collects the tax imposed under this part.

(4) An energy supplier paying a tax under this part directly to a county may retain the percentage of the tax authorized under Subsection 59-12-108(2) for the energy supplier's costs of collecting and remitting the tax.

(5) An energy supplier paying the tax under this part directly to a county shall file an information return with the commission, at least annually, on a form prescribed by the commission.

Section 9. Section 17-50-608 is enacted to read:

17-50-608. Report of tax collections -- Allocation when location of taxpayer cannot be accurately determined.

(1) All county energy sales and use taxes collected under this part shall be reported to the commission on forms that accurately identify the county where the taxpayer is located.

(2) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to proportionally distribute all taxes collected if the county where the taxpayer is located cannot be accurately determined.

Section 10. Section **17-50-609** is enacted to read:

17-50-609. Limitation of other energy taxes or fees.

(1) Subject to the other provisions of this section, a county may not levy or collect an energy tax or fee on a person except for an energy tax or fee imposed by the county:

(a) on an energy supplier to recover the management costs of the county caused by the activities of the energy supplier in the right-of-way of a county, if the energy tax or fee:

(i) is imposed in accordance with Section 72-7-102; and

(ii) is not related to:

(A) a county's loss of use of a highway as a result of the activities of the energy supplier in a right-of-way; or

(B) increased deterioration of a highway as a result of the activities of the energy supplier in a right-of-way; or

(b) on a person that:

(i) is not subject to a county energy sales and use tax under this part; and

(ii) locates an energy facility in the county, including:

(A) an electrical transmission line;

(B) an electrical substation;

(C) a natural gas pipeline; or

(D) a natural gas regulation station.

(2) Subsection (1)(a) may not be interpreted as exempting an energy supplier from complying with any ordinance:

(a) related to excavation, construction, or installation of an energy facility described in Subsection (1)(b)(ii); and

(b) that addresses the safety and quality standards of the county for excavation,

construction, or installation.

(3) An energy tax or fee imposed under Subsection (1)(b) shall be imposed:

(a) by ordinance; and

(b) on a competitively neutral basis.

Section 11. Section **17-50-610** is enacted to read:

17-50-610. Metalliferous mining -- Exemption from county energy sales and use tax.

A county may not levy a county energy sales and use tax on energy sold or consumed in metalliferous mining activities.

Section 12. Section **17-50-701** is enacted to read:

Part 7. County Telecommunications License Tax Act

17-50-701. Title.

This part is known as the "County Telecommunications License Tax Act."

Section 13. Section **17-50-702** is enacted to read:

17-50-702. Definitions.

As used in this part:

(1) "Commission" means the State Tax Commission.

(2) "Contractual franchise fee" means:

(a) a fee:

(i) provided for in a franchise agreement; and

(ii) that is consideration for the franchise agreement; or

(b) (i) a fee similar to Subsection (2)(a); or

(ii) any combination of Subsections (2)(a) and (b).

(3) "County" means a county of the first class.

(4) (a) Subject to Subsections (4)(b) and (c), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

(b) For purposes of this section and Section 17-50-707, "customer" means:

(i) the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or

(ii) if the end user is not the person described in Subsection (4)(b)(i), the end user of

telecommunications service.

(c) "Customer" does not include a reseller:

(i) of telecommunications service; or

(ii) for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

(5) (a) "End user" means the person who uses a telecommunications service.

(b) For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

(6) "Franchise agreement" means:

(a) a franchise; or

(b) an ordinance, a contract, or an agreement granting a franchise.

(7) "Franchise tax" means:

(a) a franchise tax;

(b) a tax similar to a franchise tax; or

(c) any combination of Subsections (7)(a) and (b).

(8) (a) "Gross receipts from telecommunications service" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

(i) a tax, fee, or charge:

(A) imposed by a governmental entity;

(B) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and

(C) imposed only on a telecommunications provider;

(ii) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or

(iii) interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

(b) "Gross receipts from telecommunications service" includes a charge necessary to complete a sale of a telecommunications service.

(9) "Mobile telecommunications service" is as defined in the Mobile

431 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

432 (10) "Place of primary use":

433 (a) for telecommunications service other than mobile telecommunications service,
434 means the street address representative of where the customer's use of the telecommunications
435 service primarily occurs, which shall be:

436 (i) the residential street address of the customer; or

437 (ii) the primary business street address of the customer; or

438 (b) for mobile telecommunications service, is as defined in the Mobile
439 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

440 (11) Notwithstanding where a call is billed or paid, "service address" means:

441 (a) if the location described in this Subsection (11)(a) is known, the location of the
442 telecommunications equipment:

443 (i) to which a call is charged; and

444 (ii) from which the call originates or terminates;

445 (b) if the location described in Subsection (11)(a) is not known but the location
446 described in this Subsection (11)(b) is known, the location of the origination point of the signal
447 of the telecommunications service first identified by:

448 (i) the telecommunications system of the telecommunications provider; or

449 (ii) if the system used to transport the signal is not a system of the telecommunications
450 provider, information received by the telecommunications provider from its service provider;

451 or

452 (c) if the locations described in Subsection (11)(a) or (b) are not known, the location of
453 a customer's place of primary use.

454 (12) (a) Subject to Subsections (12)(b) and (c), "telecommunications provider" means a
455 person that:

456 (i) owns, controls, operates, or manages a telecommunications service; or

457 (ii) engages in an activity described in Subsection (12)(a)(i) for the shared use with or
458 resale to any person of the telecommunications service.

459 (b) A person described in Subsection (12)(a) is a telecommunications provider whether
460 or not the Public Service Commission of Utah regulates:

461 (i) that person; or

462 (ii) the telecommunications service that the person owns, controls, operates, or
463 manages.

464 (c) "Telecommunications provider" does not include an aggregator as defined in
465 Section 54-8b-2.

466 (13) "Telecommunications service" means:

467 (a) telecommunications service, as defined in Section 59-12-102, other than mobile
468 telecommunications service, that originates and terminates within the boundaries of this state;

469 (b) mobile telecommunications service, as defined in Section 59-12-102:

470 (i) that originates and terminates within the boundaries of one state; and
471 (ii) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4
472 U.S.C. Sec. 116 et seq.; or

473 (c) an ancillary service as defined in Section 59-12-102.

474 (14) (a) Except as provided in Subsection (14)(b), "telecommunications tax or fee"
475 means any of the following imposed by a county on a telecommunications provider:

476 (i) a tax;
477 (ii) a license;
478 (iii) a fee;
479 (iv) a license fee;
480 (v) a license tax;
481 (vi) a franchise fee; or
482 (vii) a charge similar to a tax, license, or fee described in Subsections (14)(a)(i)
483 through (vi).

484 (b) "Telecommunications tax or fee" does not include:

485 (i) the county telecommunications license tax authorized by this part; or
486 (ii) a tax, fee, or charge, including a tax imposed under Title 59, Revenue and
487 Taxation, that is imposed:

488 (A) on telecommunications providers; and
489 (B) on persons who are not telecommunications providers.

490 Section 14. Section **17-50-703** is enacted to read:

491 **17-50-703. County may levy county telecommunications license tax -- Recovery**
492 **from customers -- Enactment, repeal, or change in rate of tax -- Annexation.**

(1) (a) Subject to the provisions of this section and except as provided in Subsection (1)(b), beginning July 1, 2011, and ending June 30, 2016, a county may levy on and provide that there is collected from a telecommunications provider a county telecommunications license tax on the telecommunications provider's gross receipts from telecommunications service that are attributed to the unincorporated county in accordance with Section 17-50-707.

(b) To levy and provide for the collection of a county telecommunications license tax under this part, the county shall adopt an ordinance that complies with the requirements of Section 17-50-704.

(c) Beginning on July 1, 2011, a county telecommunications license tax imposed under this part shall be at a rate of up to 3.5% of the telecommunications provider's gross receipts from telecommunications service that are attributed to the county in accordance with Section 17-50-707.

(2) A telecommunications provider may recover the amounts paid in county telecommunications license taxes from the customers of the telecommunications provider within the county imposing the unincorporated county telecommunications license tax through a charge that is separately identified in the statement of the transaction with the customer as the recovery of a tax.

(3) (a) For purposes of this Subsection (3):

(i) "Annexation" means an annexation to a county under Chapter 2, Part 2, County Annexation.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) If, in accordance with Subsection (1), a county enacts or repeals a tax or changes the rate of the tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(b)(ii) from the county.

(ii) The notice described in Subsection (3)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax under this part or change the rate of the tax;

(B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

(D) if the county enacts the county telecommunications license tax or changes the rate of the tax, the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after July 1, 2011, the annexation will result in a change in the rate of the tax under this part for an annexing area, the change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(c)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (3)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (3)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

(4) A county may not levy or collect a county telecommunications license tax for telecommunications service provided within any portion of the county that is within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act.

Section 15. Section **17-50-704** is enacted to read:

17-50-704. County telecommunications license tax ordinance provisions.

An ordinance required by Section 17-50-703 shall include a provision that:

(1) levies an unincorporated county telecommunications license tax:

(a) on the gross receipts from telecommunications service attributed to the county in accordance with Section 17-50-707;

(b) at a rate:

(i) not to exceed the rate specified in Section 17-50-703; and

(ii) subject to the requirements of Section 17-50-707;

(c) (i) beginning on or after July 1, 2010; and

(ii) ending before or on June 30, 2016; and

(d) subject to the requirements of Section 17-50-703;

(2) on or before the effective date of the ordinance, the county shall enter into the

uniform interlocal agreement with the commission described in Section 17-50-705 under which the commission collects, enforces, and administers the county telecommunications license tax;

(3) exempts a county from the limitation on the rate that may be imposed under Subsection (1)(b)(i) if the exemption from the limitation on the rate that may be imposed under Subsection (1)(b)(i) is approved by a majority vote of the voters in the unincorporated county that vote in:

(a) a county general election;

(b) a regular general election; or

(c) a local special election;

(4) incorporates the provisions of Section 17-50-708; and

(5) provides a credit against the tax in the amount of a contractual franchise fee paid if:

(a) a telecommunications provider pays a contractual franchise fee to a county pursuant to a franchise agreement in effect on July 1, 2011;

(b) the contractual franchise fee is passed through by the energy supplier to a taxpayer as a separately itemized charge; and

(c) the energy supplier has accepted the franchise.

Section 16. Section **17-50-705** is enacted to read:

17-50-705. Collection of taxes by commission -- Uniform interlocal agreement -- Rulemaking authority -- Charge for services.

(1) Subject to the other provisions of this section, the commission shall collect, enforce, and administer any county telecommunications license tax imposed under this part pursuant to:

(a) the same procedures used in the administration, collection, and enforcement of the state sales and use tax under:

(i) Title 59, Chapter 1, General Taxation Policies; and

(ii) Title 59, Chapter 12, Part 1, Tax Collection:

(A) except for:

(I) Subsection 59-12-103(2)(g);

(II) Section 59-12-104;

(III) Section 59-12-104.1;

(IV) Section 59-12-104.2;

586 (V) Section 59-12-104.3;

587 (VI) Section 59-12-107.1; and

588 (VII) Section 59-12-123; and

589 (B) except that for purposes of Section 59-1-1410, the term "person" may include a
590 customer from whom a county telecommunications license tax is recovered in accordance with
591 Subsection 17-50-703(2); and

592 (b) a uniform interlocal agreement:

593 (i) between:

594 (A) the county that imposes the county telecommunications license tax; and

595 (B) the commission;

596 (ii) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

597 (iii) that complies with Subsection (2)(a); and

598 (iv) that is developed by rule in accordance with Subsection (2)(b).

599 (2) (a) The uniform interlocal agreement described in Subsection (1)(b) shall provide
600 that the commission shall:

601 (i) transmit money collected under this part:

602 (A) monthly; and

603 (B) by electronic funds transfer by the commission to the county;

604 (ii) conduct audits of the county telecommunications license tax;

605 (iii) charge the county for the commission's services under this section in an amount:

606 (A) sufficient to reimburse the commission for the cost to the commission in rendering
607 the services; and

608 (B) that may not exceed an amount equal to 1.5% of the county telecommunications
609 license tax imposed by the ordinance of the county; and

610 (iv) collect, enforce, and administer the county telecommunications license tax
611 authorized under this part pursuant to the same procedures used in the administration,
612 collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

613 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
614 commission shall develop a uniform interlocal agreement that meets the requirements of this
615 section.

616 (3) The administrative fee charged under Subsection (2)(a) shall be:

(a) deposited in the Sales and Use Tax Administrative Fees Account; and

(b) used for administration of county telecommunications license taxes under this part.

Section 17. Section **17-50-706** is enacted to read:

17-50-706. Limitation of other telecommunications taxes or fees.

(1) Subject to the other provisions of this section, a county may not levy or collect a telecommunications tax or fee on a person except for a telecommunications tax or fee imposed by the county:

(a) on a telecommunications provider to recover the management costs of the county caused by the activities of the telecommunications provider in the right-of-way of a county if the telecommunications tax or fee:

(i) is imposed in accordance with Section 72-7-102; and

(ii) is not related to:

(A) a county's loss of use of a highway as a result of the activities of the telecommunications provider in a right-of-way; or

(B) increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way; or

(b) on a person that:

(i) is not subject to a county telecommunications license tax under this part; and

(ii) locates telecommunications facilities, as defined in Section 72-7-108, in the county.

(2) Subsection (1)(a) may not be interpreted as exempting a telecommunications provider from complying with any ordinance:

(a) related to excavation, construction, or installation of a telecommunications facility;
and

(b) that addresses the safety and quality standards of the county for excavation, construction, or installation.

(3) A telecommunications tax or fee imposed under Subsection (1)(b) shall be imposed:

(a) by ordinance; and

(b) on a competitively neutral basis.

Section 18. Section **17-50-707** is enacted to read:

17-50-707. Attributing the gross receipts from telecommunications service to a

county -- Rate impact.

(1) The gross receipts from a telecommunications service are attributed to a county if the gross receipts are from a transaction for telecommunications service that is located within the county:

(a) for purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax Act; and

(b) determined in accordance with Section 59-12-215.

(2) (a) The rate imposed on the gross receipts for telecommunications service shall be determined in accordance with Subsection (2)(b) if the location of a transaction for telecommunications service is determined under Subsection (1) to be a county other than the county in which is located:

(i) for telecommunications service other than mobile telecommunications service, the customer's service address; or

(ii) for mobile telecommunications service, the customer's primary place of use.

(b) The rate imposed on the gross receipts for telecommunications service described in Subsection (2)(a) shall be the lower of:

(i) the rate imposed by the taxing jurisdiction in which the transaction is located under Subsection (1); or

(ii) the rate imposed by the county in which the transaction is located:

(A) for telecommunications service other than mobile telecommunications service, the customer's service address; or

(B) for mobile telecommunications service, the customer's primary place of use.

Section 19. Section **17-50-708** is enacted to read:

17-50-708. Procedure for taxes erroneously recovered from customers.

A customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer county telecommunications license taxes authorized by this part unless the customer meets the same requirements that a purchaser is required to meet to bring a cause of action against a seller for a refund or credit as provided in Subsection 59-12-110.1(3).

Section 20. Section **17-50-709** is enacted to read:

17-50-709. Transactions consisting of telecommunications service and

nontelecommunications services.

(1) For purposes of this section, "nontelecommunications services" means services or tangible personal property that are:

(a) not telecommunications services; and

(b) provided by a telecommunications provider to a customer.

(2) Except to the extent prohibited by federal law, if a telecommunications provider provides nontelecommunications services to a customer as part of the same transaction in which the telecommunications provider provides telecommunications services, the gross receipts from the nontelecommunications services provided by the telecommunications provider are subject to a tax under this part unless:

(a) the charge for the nontelecommunications services is separately identified in the statement of the transaction with the customer of the telecommunications service; or

(b) from the books and records of the telecommunications provider that are kept in the regular course of business, the telecommunications provider can reasonably identify the portion of the total charge for the transaction that is attributable to:

(i) the nontelecommunications services; and

(ii) the telecommunications service.

Section 21. Section **17-50-710** is enacted to read:

17-50-710. Existing telecommunications franchise or contractual franchise fees.

(1) Except as authorized in Subsection (2) or Section 59-12-203 or 17-50-704, a county may not:

(a) impose on, charge, or collect a franchise tax or contractual franchise fee from a telecommunications supplier; or

(b) collect a franchise tax or contractual franchise fee pursuant to a franchise agreement in effect on July 1, 2011.

(2) (a) A county that collects a contractual franchise fee from a telecommunications supplier pursuant to a franchise agreement in effect on July 1, 2011, may continue to collect that fee at the same rate for the remaining term of the franchise agreement, except the county shall provide a credit against the county telecommunications license tax in the amount of the contractual franchise fee paid by the telecommunications provider pursuant to Subsection 17-50-704(5) and Subsection (2)(b).

(b) A county may not provide a credit described in Subsection (2)(a) for a service in a franchise agreement other than a telecommunications service.

(3) (a) Subject to the requirements of Subsection (3)(b), a franchise agreement between a county and a telecommunications provider may contain a provision that:

(i) requires the telecommunications provider by agreement to pay a contractual franchise fee that is otherwise prohibited under this part; and

(ii) imposes the contractual franchise fee on or after the day on which this part:

(A) is repealed, invalidated, or the maximum allowable rate provided in Section 17-50-703 is reduced; and

(B) is not superseded by a law imposing a substantially equivalent tax.

(b) A county may not charge a contractual franchise fee under the provisions permitted by Subsection (3)(a) unless the county charges an equal contractual franchise fee or a tax on all telecommunications providers.

(4) This section may not affect the validity of any existing or future franchise agreement and any franchise agreement effective on July 1, 2011, shall remain in full force and effect, unless otherwise terminated or altered by agreement or applicable law.

Section 22. Section **59-1-302** is amended to read:

59-1-302. Penalty for nonpayment of certain taxes -- Jeopardy proceedings.

(1) This section applies to the following:

(a) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(b) a tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(c) a tax under Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act; and

(d) a tax under Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act.

~~[(e)]~~ (e) a tax under Chapter 10, Part 4, Withholding of Tax;

~~[(f)]~~ (f) a tax under Chapter 12, Sales and Use Tax Act;

~~[(g)]~~ (g) a tax under Chapter 13, Part 2, Motor Fuel;

~~[(h)]~~ (h) a tax under Chapter 13, Part 3, Special Fuel; ~~[and]~~

~~[(i)]~~ (i) a tax under Chapter 13, Part 4, Aviation Fuel~~[-]~~;

(2) (a) A person required to collect, truthfully account for, and pay over a tax listed in

Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat the tax or the payment of the tax, is liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over.

(b) The penalty described in Subsection (2)(a) is in addition to other penalties provided by law.

(3) (a) If the commission determines in accordance with Subsection (2) that a person is liable for the penalty, the commission shall mail a notice of the proposed penalty to the person.

(b) The notice of proposed penalty shall:

(i) set forth the basis of the assessment; and

(ii) be mailed:

(A) in accordance with Section 59-1-1404; and

(B) to the person's last-known address.

(4) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

(a) pay the amount of the proposed penalty at the place and time stated in the notice; or

(b) proceed in accordance with the review procedures of Subsection (5).

(5) A person against whom a penalty is proposed in accordance with Subsections (2) and (3) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

(6) If the commission determines that the collection of the penalty is in jeopardy, this section does not prevent the immediate collection of the penalty in accordance with the procedures and requirements for an emergency proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

(7) (a) In a hearing before the commission and in a judicial review of the hearing, the commission and the court shall consider any inference and evidence that a person has willfully failed to collect, truthfully account for, or pay over a tax listed in Subsection (1).

(b) It is prima facie evidence that a person has willfully failed to collect, truthfully account for, or pay over a tax listed in Subsection (1) if the commission or a court finds that the person charged with the responsibility of collecting, accounting for, or paying over the taxes:

(i) made a voluntary, conscious, and intentional decision to prefer other creditors over

the state government or utilize the tax money for personal purposes;

(ii) recklessly disregarded obvious or known risks that resulted in the failure to collect, truthfully account for, or pay over the tax; or

(iii) failed to investigate or to correct mismanagement, having notice that the tax was not or is not being collected, accounted for, or paid over as provided by law.

(c) The commission or court is not required to find a bad motive or specific intent to defraud the government or deprive the government of revenue to establish willfulness under this section.

(d) If the commission determines that a person is liable for the penalty under Subsection (2), the commission shall assess the penalty and give notice and demand for payment in accordance with Section 59-1-1411.

Section 23. Section **59-1-401** is amended to read:

59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.

(1) As used in this section:

(a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the commission:

(i) has implemented the commission's GenTax system; and

(ii) at least 30 days before implementing the commission's GenTax system as described in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website stating:

(A) the date the commission will implement the GenTax system with respect to the tax, fee, or charge; and

(B) that, at the time the commission implements the GenTax system with respect to the tax, fee, or charge:

(I) a person that files a return after the due date as described in Subsection (2)(a) is subject to the penalty described in Subsection (2)(c)(ii); and

(II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is subject to the penalty described in Subsection (3)(b)(ii).

(b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or

charge, the later of:

(i) the date on which the commission implements the commission's GenTax system with respect to the tax, fee, or charge; or

(ii) 30 days after the date the commission provides the notice described in Subsection (1)(a)(ii) with respect to the tax, fee, or charge.

(c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

(A) a tax, fee, or charge the commission administers under:

(I) this title;

(II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(IV) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;

(V) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;

~~[(IV)]~~ (VI) Section 19-6-410.5;

~~[(V)]~~ (VII) Section 19-6-714;

~~[(VI)]~~ (VIII) Section 19-6-805;

~~[(VII)]~~ (IX) Section 34A-2-202;

~~[(VIII)]~~ (X) Section 40-6-14;

~~[(IX)]~~ (XI) Section 69-2-5;

~~[(X)]~~ (XII) Section 69-2-5.5; or

~~[(XI)]~~ (XIII) Section 69-2-5.6; or

(B) another amount that by statute is subject to a penalty imposed under this section.

(ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

(A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

(B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

(C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

(D) Chapter 3, Tax Equivalent Property Act; or

(E) Chapter 4, Privilege Tax.

(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated tax, fee, or charge.

(2) (a) The due date for filing a return is:

(i) if the person filing the return is not allowed by law an extension of time for filing

834 the return, the day on which the return is due as provided by law; or
835 (ii) if the person filing the return is allowed by law an extension of time for filing the
836 return, the earlier of:
837 (A) the date the person files the return; or
838 (B) the last day of that extension of time as allowed by law.
839 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
840 return after the due date described in Subsection (2)(a).
841 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:
842 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
843 tax, fee, or charge:
844 (A) \$20; or
845 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
846 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
847 fee, or charge, beginning on the activation date for the tax, fee, or charge:
848 (A) \$20; or
849 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
850 filed no later than five days after the due date described in Subsection (2)(a);
851 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
852 more than five days after the due date but no later than 15 days after the due date described in
853 Subsection (2)(a); or
854 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
855 filed more than 15 days after the due date described in Subsection (2)(a).
856 (d) This Subsection (2) does not apply to:
857 (i) an amended return; or
858 (ii) a return with no tax due.
859 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:
860 (i) the person files a return on or before the due date for filing a return described in
861 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
862 date;
863 (ii) the person:
864 (A) is subject to a penalty under Subsection (2)(b); and

(B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the due date for filing a return described in Subsection (2)(a);

(iii) (A) the person is subject to a penalty under Subsection (2)(b); and

(B) the commission estimates an amount of tax due for that person in accordance with Subsection 59-1-1406(2);

(iv) the person:

(A) is mailed a notice of deficiency; and

(B) within a 30-day period after the day on which the notice of deficiency described in Subsection (3)(a)(iv)(A) is mailed:

(I) does not file a petition for redetermination or a request for agency action; and

(II) fails to pay the tax, fee, or charge due on a return;

(v) (A) the commission:

(I) issues an order constituting final agency action resulting from a timely filed petition for redetermination or a timely filed request for agency action; or

(II) is considered to have denied a request for reconsideration under Subsection 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed request for agency action; and

(B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period after the date the commission:

(I) issues the order constituting final agency action described in Subsection (3)(a)(v)(A)(I); or

(II) is considered to have denied the request for reconsideration described in Subsection (3)(a)(v)(A)(II); or

(vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date of a final judicial decision resulting from a timely filed petition for judicial review.

(b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an unactivated tax, fee, or charge:

(A) \$20; or

(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with

respect to an activated tax, fee, or charge, beginning on the activation date:

(A) \$20; or

(B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid no later than five days after the due date for filing a return described in Subsection (2)(a);

(II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid more than five days after the due date for filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or

(III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a return described in Subsection (2)(a).

(4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:

(A) the original due date of the tax return, without extensions, for the taxable year; or

(B) with respect to any portion of the underpayment, the date on which that portion is paid.

(iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

(5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a person allowed by law an extension of time for filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in

Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not including the extension of time, the person fails to pay:

(i) for a person filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

(ii) for a person filing an individual income tax return under Chapter 10, Individual Income Tax Act, the payment required by Subsection 59-10-516(2).

(b) For purposes of Subsection (5)(a), the penalty per month during the period of the extension of time for filing the return is an amount equal to 2% of the tax due on the return, unpaid as of the day on which the return is due as provided by law.

(6) If a person does not file a return within an extension of time allowed by Section 59-7-505 or 59-10-516, the person:

(a) is not subject to a penalty in the amount described in Subsection (5)(b); and

(b) is subject to a penalty in an amount equal to the sum of:

(i) a late file penalty in an amount equal to the greater of:

(A) \$20; or

(B) 10% of the tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time; and

(ii) a late pay penalty in an amount equal to the greater of:

(A) \$20; or

(B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time.

(7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided in this Subsection (7)(a).

(i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax, fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that is due to negligence.

(ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire underpayment.

(iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 50% of the entire underpayment.

(iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

(b) If the commission determines that a person is liable for a penalty imposed under Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed penalty.

(i) The notice of proposed penalty shall:

(A) set forth the basis of the assessment; and

(B) be mailed by certified mail, postage prepaid, to the person's last-known address.

(ii) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

(A) pay the amount of the proposed penalty at the place and time stated in the notice;

or

(B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

(iii) A person against whom a penalty is proposed in accordance with this Subsection (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

(iv) (A) If the commission determines that a person is liable for a penalty under this Subsection (7), the commission shall assess the penalty and give notice and demand for payment.

(B) The commission shall mail the notice and demand for payment described in Subsection (7)(b)(iv)(A):

(I) to the person's last-known address; and

(II) in accordance with Section 59-1-1404.

(c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

(i) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(A) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); or

(ii) the commission issues a final unappealable administrative order determining that:

(A) the seller meets one or more of the criteria described in Subsection

59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d).

(d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (7)(a)(ii) if:

(i) (A) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); or

(B) the commission issues a final unappealable administrative order determining that:

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); and

(ii) the seller's intentional disregard of law or rule is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(8) The penalty for failure to file an information return, information report, or a complete supporting schedule is \$50 for each information return, information report, or supporting schedule up to a maximum of \$1,000.

(9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of a law relating to a tax, fee, or charge and files a purported return that fails to contain information from which the correctness of reported tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is substantially incorrect, the penalty is \$500.

(10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by Subsection 59-12-108(1)(a):

1020 (i) is subject to a penalty described in Subsection (2); and
1021 (ii) may not retain the percentage of sales and use taxes that would otherwise be
1022 allowable under Subsection 59-12-108(2).

1023 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
1024 required by Subsection 59-12-108(1)(a)(ii)(B):

1025 (i) is subject to a penalty described in Subsection (2); and
1026 (ii) may not retain the percentage of sales and use taxes that would otherwise be
1027 allowable under Subsection 59-12-108(2).

1028 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:
1029 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
1030 following documents:

1031 (A) a return;
1032 (B) an affidavit;
1033 (C) a claim; or
1034 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

1035 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
1036 will be used in connection with any material matter administered by the commission; and
1037 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
1038 with any material matter administered by the commission, would result in an understatement of
1039 another person's liability for a tax, fee, or charge.

1040 (b) The following acts apply to Subsection (11)(a)(i):

1041 (i) preparing any portion of a document described in Subsection (11)(a)(i);
1042 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
1043 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
1044 (iv) advising in the preparation or presentation of any portion of a document described
1045 in Subsection (11)(a)(i);

1046 (v) aiding in the preparation or presentation of any portion of a document described in
1047 Subsection (11)(a)(i);

1048 (vi) assisting in the preparation or presentation of any portion of a document described
1049 in Subsection (11)(a)(i); or
1050 (vii) counseling in the preparation or presentation of any portion of a document

1051 described in Subsection (11)(a)(i).

1052 (c) For purposes of Subsection (11)(a), the penalty:

1053 (i) shall be imposed by the commission;

1054 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which

1055 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

1056 (iii) is in addition to any other penalty provided by law.

1057 (d) The commission may seek a court order to enjoin a person from engaging in

1058 conduct that is subject to a penalty under this Subsection (11).

1059 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1060 commission may make rules prescribing the documents that are similar to Subsections

1061 (11)(a)(i)(A) through (C).

1062 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as

1063 provided in Subsections (12)(b) through (e).

1064 (b) (i) A person who is required by this title or any laws the commission administers or

1065 regulates to register with or obtain a license or permit from the commission, who operates

1066 without having registered or secured a license or permit, or who operates when the registration,

1067 license, or permit is expired or not current, is guilty of a class B misdemeanor.

1068 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the

1069 penalty may not:

1070 (A) be less than \$500; or

1071 (B) exceed \$1,000.

1072 (c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this

1073 title or any lawful requirement of the commission, fails to make, render, sign, or verify a return

1074 or to supply information within the time required by law, or who makes, renders, signs, or

1075 verifies a false or fraudulent return or statement, or who supplies false or fraudulent

1076 information, is guilty of a third degree felony.

1077 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the

1078 penalty may not:

1079 (A) be less than \$1,000; or

1080 (B) exceed \$5,000.

1081 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or

1082 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
1083 guilty of a second degree felony.

1084 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
1085 penalty may not:

1086 (A) be less than \$1,500; or

1087 (B) exceed \$25,000.

1088 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1089 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
1090 documents:

1091 (I) a return;

1092 (II) an affidavit;

1093 (III) a claim; or

1094 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

1095 (B) subject to Subsection (12)(e)(iii), with knowledge that ~~the~~ a document described
1096 in Subsection (12)(e)(i)(A):

1097 (I) is false or fraudulent as to any material matter; and

1098 (II) could be used in connection with any material matter administered by the
1099 commission.

1100 (ii) The following acts apply to Subsection (12)(e)(i):

1101 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

1102 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

1103 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

1104 (D) advising in the preparation or presentation of any portion of a document described
1105 in Subsection (12)(e)(i)(A);

1106 (E) aiding in the preparation or presentation of any portion of a document described in
1107 Subsection (12)(e)(i)(A);

1108 (F) assisting in the preparation or presentation of any portion of a document described
1109 in Subsection (12)(e)(i)(A); or

1110 (G) counseling in the preparation or presentation of any portion of a document
1111 described in Subsection (12)(e)(i)(A).

1112 (iii) This Subsection (12)(e) applies:

1113 (A) regardless of whether the person for which the document described in Subsection
1114 (12)(e)(i)(A) is prepared or presented:

1115 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

1116 (II) consented to the falsity of ~~the~~ a document described in Subsection (12)(e)(i)(A);

1117 and

1118 (B) in addition to any other penalty provided by law.

1119 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
1120 penalty may not:

1121 (A) be less than \$1,500; or

1122 (B) exceed \$25,000.

1123 (v) The commission may seek a court order to enjoin a person from engaging in
1124 conduct that is subject to a penalty under this Subsection (12)(e).

1125 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1126 the commission may make rules prescribing the documents that are similar to Subsections
1127 (12)(e)(i)(A)(I) through (III).

1128 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
1129 the later of six years:

1130 (i) from the date the tax should have been remitted; or

1131 (ii) after the day on which the person commits the criminal offense.

1132 (13) Upon making a record of its actions, and upon reasonable cause shown, the
1133 commission may waive, reduce, or compromise any of the penalties or interest imposed under
1134 this part.

1135 Section 24. Section **59-1-1402** is amended to read:

1136 **59-1-1402. Definitions.**

1137 As used in this part:

1138 (1) "Administrative cost" means a fee imposed to cover:

1139 (a) the cost of filing;

1140 (b) the cost of administering a garnishment; or

1141 (c) a cost similar to Subsection (1)(a) or (b) as determined by the commission by rule
1142 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1143 (2) "Books and records" means the following made available in printed or electronic

1144 format:

- 1145 (a) an account;
- 1146 (b) a book;
- 1147 (c) an invoice;
- 1148 (d) a memorandum;
- 1149 (e) a paper;
- 1150 (f) a record; or
- 1151 (g) an item similar to Subsections (2)(a) through (f) as determined by the commission

1152 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1153 (3) "Deficiency" means:

1154 (a) the amount by which a tax, fee, or charge exceeds the difference between:

1155 (i) the sum of:

1156 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and

1157 (B) any amount previously assessed, or collected without assessment, as a deficiency;

1158 and

1159 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect

1160 to that tax, fee, or charge; or

1161 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,

1162 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

1163 (i) the amount previously assessed, or collected without assessment, as a deficiency;

1164 and

1165 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect

1166 to that tax, fee, or charge.

1167 (4) "Garnishment" means any legal or equitable procedure through which one or more

1168 of the following are required to be withheld for payment of an amount a person owes:

1169 (a) an asset of the person held by another person; or

1170 (b) the earnings of the person.

1171 (5) "Liability" means the following that a person is required to remit to the

1172 commission:

1173 (a) a tax, fee, or charge;

1174 (b) an addition to a tax, fee, or charge;

- 1175 (c) an administrative cost;
- 1176 (d) interest that accrues in accordance with Section 59-1-402; or
- 1177 (e) a penalty that accrues in accordance with Section 59-1-401.
- 1178 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section
- 1179 6213(g)(2), Internal Revenue Code.
- 1180 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)
- 1181 means:
- 1182 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable
- 1183 year; or
- 1184 (ii) a corresponding or comparable provision of the Internal Revenue Code as
- 1185 amended, redesignated, or reenacted.
- 1186 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:
- 1187 (i) a tax, fee, or charge the commission administers under:
- 1188 (A) this title;
- 1189 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 1190 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 1191 (D) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;
- 1192 (E) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;
- 1193 [~~(D)~~] (F) Section 19-6-410.5;
- 1194 [~~(E)~~] (G) Section 19-6-714;
- 1195 [~~(F)~~] (H) Section 19-6-805;
- 1196 [~~(G)~~] (I) Section 34A-2-202;
- 1197 [~~(H)~~] (J) Section 40-6-14;
- 1198 [~~(I)~~] (K) Section 69-2-5;
- 1199 [~~(J)~~] (L) Section 69-2-5.5; or
- 1200 [~~(K)~~] (M) Section 69-2-5.6; or
- 1201 (ii) another amount that by statute is administered by the commission.
- 1202 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
- 1203 (i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
- 1204 (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
- 1205 (iii) Chapter 2, Property Tax Act;

- 1206 (iv) Chapter 3, Tax Equivalent Property Act;
1207 (v) Chapter 4, Privilege Tax; or
1208 (vi) Chapter 13, Part 5, Interstate Agreements.
1209 (8) "Transferee" means:
1210 (a) a devisee;
1211 (b) a distributee;
1212 (c) a donee;
1213 (d) an heir;
1214 (e) a legatee; or
1215 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission
1216 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1217 Section 25. Section **59-12-107** is amended to read:

1218 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
1219 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**
1220 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**

1221 (1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 or 59-12-123
1222 and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales and use
1223 taxes imposed by this chapter if within this state the seller:

- 1224 (i) has or utilizes:
1225 (A) an office;
1226 (B) a distribution house;
1227 (C) a sales house;
1228 (D) a warehouse;
1229 (E) a service enterprise; or
1230 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);
1231 (ii) maintains a stock of goods;
1232 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
1233 state, unless the seller's only activity in the state is:
1234 (A) advertising; or
1235 (B) solicitation by:
1236 (I) direct mail;

- 1237 (II) electronic mail;
- 1238 (III) the Internet;
- 1239 (IV) telecommunications service; or
- 1240 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);
- 1241 (iv) regularly engages in the delivery of property in the state other than by:
- 1242 (A) common carrier; or
- 1243 (B) United States mail; or
- 1244 (v) regularly engages in an activity directly related to the leasing or servicing of
- 1245 property located within the state.
- 1246 (b) A seller that does not meet one or more of the criteria provided for in Subsection
- 1247 (1)(a):
- 1248 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
- 1249 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 1250 (B) remit the tax to the commission as provided in this part; or
- 1251 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described
- 1252 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
- 1253 (c) The collection and remittance of a tax under this chapter by a seller that is
- 1254 registered under the agreement may not be used as a factor in determining whether that seller is
- 1255 required by Subsection (1)(a) to:
- 1256 (i) pay a tax, fee, or charge under:
- 1257 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 1258 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 1259 (C) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;
- 1260 (D) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;
- 1261 [~~C~~] (E) Section 19-6-714;
- 1262 [~~D~~] (F) Section 19-6-805;
- 1263 [~~E~~] (G) Section 69-2-5;
- 1264 [~~F~~] (H) Section 69-2-5.5;
- 1265 [~~G~~] (I) Section 69-2-5.6; or
- 1266 [~~H~~] (J) this title; or
- 1267 (ii) collect and remit a tax, fee, or charge under:

- 1268 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1269 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
1270 (C) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;
1271 (D) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;
1272 [~~C~~] (E) Section 19-6-714;
1273 [~~D~~] (F) Section 19-6-805;
1274 [~~E~~] (G) Section 69-2-5;
1275 [~~F~~] (H) Section 69-2-5.5;
1276 [~~G~~] (I) Section 69-2-5.6; or
1277 [~~H~~] (J) this title.
- 1278 (d) A person shall pay a use tax imposed by this chapter on a transaction described in
1279 Subsection 59-12-103(1) if:
- 1280 (i) the seller did not collect a tax imposed by this chapter on the transaction; and
1281 (ii) the person:
- 1282 (A) stores the tangible personal property or product transferred electronically in the
1283 state;
1284 (B) uses the tangible personal property or product transferred electronically in the state;
1285 or
1286 (C) consumes the tangible personal property or product transferred electronically in the
1287 state.
- 1288 (e) The ownership of property that is located at the premises of a printer's facility with
1289 which the retailer has contracted for printing and that consists of the final printed product,
1290 property that becomes a part of the final printed product, or copy from which the printed
1291 product is produced, shall not result in the retailer being considered to have or maintain an
1292 office, distribution house, sales house, warehouse, service enterprise, or other place of
1293 business, or to maintain a stock of goods, within this state.
- 1294 (f) (i) As used in this Subsection (1)(f):
1295 (A) "Affiliated group" is as defined in Section 59-7-101, except that "affiliated group"
1296 includes a corporation that is qualified to do business but is not otherwise doing business in
1297 this state.
1298 (B) "Common ownership" is as defined in Section 59-7-101.

1299 (C) "Related seller" means a seller that:
1300 (I) is not required to pay or collect and remit sales and use taxes under Subsection
1301 (1)(a) or Section 59-12-103.1;
1302 (II) is:
1303 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes
1304 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or
1305 (Bb) a limited liability company owned by the parent corporation of an affiliated group
1306 if that parent corporation of the affiliated group is required to pay or collect and remit sales and
1307 use taxes under Subsection (1)(a); and
1308 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).
1309 (ii) A seller is not required to pay or collect and remit sales and use taxes under
1310 Subsection (1)(a):
1311 (A) if the seller is a related seller;
1312 (B) if the seller to which the related seller is related does not engage in any of the
1313 following activities on behalf of the related seller:
1314 (I) advertising;
1315 (II) marketing;
1316 (III) sales; or
1317 (IV) other services; and
1318 (C) if the seller to which the related seller is related accepts the return of an item sold
1319 by the related seller, the seller to which the related seller is related accepts the return of that
1320 item:
1321 (I) sold by a seller that is not a related seller; and
1322 (II) on the same terms as the return of an item sold by that seller to which the related
1323 seller is related.
1324 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
1325 collected from a purchaser.
1326 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
1327 cent, in excess of the tax computed at the rates prescribed by this chapter.
1328 (c) (i) Each seller shall:
1329 (A) give the purchaser a receipt for the tax collected; or

1330 (B) bill the tax as a separate item and declare the name of this state and the seller's
1331 sales and use tax license number on the invoice for the sale.

1332 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
1333 and relieves the purchaser of the liability for reporting the tax to the commission as a
1334 consumer.

1335 (d) A seller is not required to maintain a separate account for the tax collected, but is
1336 considered to be a person charged with receipt, safekeeping, and transfer of public moneys.

1337 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
1338 benefit of the state and for payment to the commission in the manner and at the time provided
1339 for in this chapter.

1340 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
1341 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
1342 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
1343 excess.

1344 (g) If the accounting methods regularly employed by the seller in the transaction of the
1345 seller's business are such that reports of sales made during a calendar month or quarterly period
1346 will impose unnecessary hardships, the commission may accept reports at intervals that will, in
1347 the commission's opinion, better suit the convenience of the taxpayer or seller and will not
1348 jeopardize collection of the tax.

1349 (3) (a) Except as provided in Subsections (4) through (6) and Section 59-12-108, the
1350 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
1351 before the last day of the month next succeeding each calendar quarterly period.

1352 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1353 calendar quarterly period, file with the commission a return for the preceding quarterly period.

1354 (ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the
1355 tax required under this chapter to be collected or paid for the period covered by the return.

1356 (c) Except as provided in Subsection (4)(c), a return shall contain information and be in
1357 a form the commission prescribes by rule.

1358 (d) The sales tax as computed in the return shall be based upon the total nonexempt
1359 sales made during the period, including both cash and charge sales.

1360 (e) The use tax as computed in the return shall be based upon the total amount of

purchases for storage, use, or other consumption in this state made during the period, including both by cash and by charge.

(f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for making returns and paying the taxes.

(ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

(g) The commission may require returns and payment of the tax to be made for other than quarterly periods if the commission considers it necessary in order to ensure the payment of the tax imposed by this chapter.

(h) (i) The commission may require a seller that files a simplified electronic return with the commission to file an additional electronic report with the commission.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing:

(A) the information required to be included in the additional electronic report described in Subsection (3)(h)(i); and

(B) one or more due dates for filing the additional electronic report described in Subsection (3)(h)(i).

(4) (a) As used in this Subsection (4) and Subsection (5)(b), "remote seller" means a seller that is:

(i) registered under the agreement;

(ii) described in Subsection (1)(b); and

(iii) not a:

(A) model 1 seller;

(B) model 2 seller; or

(C) model 3 seller.

(b) (i) Except as provided in Subsection (4)(b)(ii), a tax a remote seller collects in accordance with Subsection (1)(b) is due and payable:

(A) to the commission;

(B) annually; and

(C) on or before the last day of the month immediately following the last day of each calendar year.

1392 (ii) The commission may require that a tax a remote seller collects in accordance with
1393 Subsection (1)(b) be due and payable:
1394 (A) to the commission; and
1395 (B) on the last day of the month immediately following any month in which the seller
1396 accumulates a total of at least \$1,000 in agreement sales and use tax.
1397 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
1398 (4)(b), the remote seller shall file a return:
1399 (A) with the commission;
1400 (B) with respect to the tax;
1401 (C) containing information prescribed by the commission; and
1402 (D) on a form prescribed by the commission.
1403 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1404 commission shall make rules prescribing:
1405 (A) the information required to be contained in a return described in Subsection
1406 (4)(a)(i); and
1407 (B) the form described in Subsection (4)(c)(i)(D).
1408 (d) A tax a remote seller collects in accordance with this Subsection (4) shall be
1409 calculated on the basis of the total amount of taxable transactions under Subsection
1410 59-12-103(1) the remote seller completes, including:
1411 (i) a cash transaction; and
1412 (ii) a charge transaction.
1413 (5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified
1414 electronic return collects in accordance with this chapter is due and payable:
1415 (i) monthly on or before the last day of the month immediately following the month for
1416 which the seller collects a tax under this chapter; and
1417 (ii) for the month for which the seller collects a tax under this chapter.
1418 (b) A tax a remote seller that files a simplified electronic return collects in accordance
1419 with this chapter is due and payable as provided in Subsection (4).
1420 (6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
1421 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
1422 titling or registration under the laws of this state.

(b) The commission shall collect the tax described in Subsection (6)(a) when the vehicle is titled or registered.

(7) If any sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale and the retailer is responsible for the collection or payment of the tax imposed on the sale if:

(a) the retailer represents that the personal property is purchased by the retailer for resale; and

(b) the personal property is not subsequently resold.

(8) If any sale of property or service subject to the tax is made to a person prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a contractor or subcontractor of that person, the person to whom such payment or consideration is payable is not responsible for the collection or payment of the sales or use tax and the person prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid as sales or use tax has not been fully credited against sales or use tax due and payable under the rules promulgated by the commission.

(9) (a) For purposes of this Subsection (9):

(i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166, Internal Revenue Code.

(ii) Notwithstanding Subsection (9)(a)(i), "bad debt" does not include:

(A) an amount included in the purchase price of tangible personal property, a product transferred electronically, or a service that is:

(I) not a transaction described in Subsection 59-12-103(1); or

(II) exempt under Section 59-12-104;

(B) a financing charge;

(C) interest;

(D) a tax imposed under this chapter on the purchase price of tangible personal property, a product transferred electronically, or a service;

(E) an uncollectible amount on tangible personal property or a product transferred electronically that:

1454 (I) is subject to a tax under this chapter; and
1455 (II) remains in the possession of a seller until the full purchase price is paid;
1456 (F) an expense incurred in attempting to collect any debt; or
1457 (G) an amount that a seller does not collect on repossessed property.
1458 (b) A seller may deduct bad debt from the total amount from which a tax under this
1459 chapter is calculated on a return.
1460 (c) A seller may file a refund claim with the commission if:
1461 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds
1462 the amount of the seller's sales that are subject to a tax under this chapter for that same time
1463 period; and
1464 (ii) as provided in Section 59-1-1410.
1465 (d) A bad debt deduction under this section may not include interest.
1466 (e) A bad debt may be deducted under this Subsection (9) on a return for the time
1467 period during which the bad debt:
1468 (i) is written off as uncollectible in the seller's books and records; and
1469 (ii) would be eligible for a bad debt deduction:
1470 (A) for federal income tax purposes; and
1471 (B) if the seller were required to file a federal income tax return.
1472 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1473 claims a refund under this Subsection (9), the seller shall report and remit a tax under this
1474 chapter:
1475 (i) on the portion of the bad debt the seller recovers; and
1476 (ii) on a return filed for the time period for which the portion of the bad debt is
1477 recovered.
1478 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1479 (9)(f), a seller shall apply amounts received on the bad debt in the following order:
1480 (i) in a proportional amount:
1481 (A) to the purchase price of the tangible personal property, product transferred
1482 electronically, or service; and
1483 (B) to the tax due under this chapter on the tangible personal property, product
1484 transferred electronically, or service; and

- 1485 (ii) to:
- 1486 (A) interest charges;
- 1487 (B) service charges; and
- 1488 (C) other charges.
- 1489 (h) A seller's certified service provider may make a deduction or claim a refund for bad
- 1490 debt on behalf of the seller:
- 1491 (i) in accordance with this Subsection (9); and
- 1492 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
- 1493 deduction or refund to the seller.
- 1494 (i) A seller may allocate bad debt among the states that are members of the agreement
- 1495 if the seller's books and records support that allocation.
- 1496 (10) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
- 1497 amount of tax required by this chapter.
- 1498 (b) A violation of this section is punishable as provided in Section 59-1-401.
- 1499 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
- 1500 paid to the state, except amounts determined to be due by the commission under Chapter 1,
- 1501 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
- 1502 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
- 1503 addition to the tax, penalties and interest as provided in Section 59-1-401.
- 1504 (d) For purposes of prosecution under this section, each quarterly tax period in which a
- 1505 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
- 1506 tax required to be remitted, constitutes a separate offense.
- 1507 Section 26. Section **59-12-108** is amended to read:
- 1508 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
- 1509 **Certain amounts allocated to local taxing jurisdictions.**
- 1510 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
- 1511 chapter of \$50,000 or more for the previous calendar year shall:
- 1512 (i) file a return with the commission:
- 1513 (A) monthly on or before the last day of the month immediately following the month
- 1514 for which the seller collects a tax under this chapter; and
- 1515 (B) for the month for which the seller collects a tax under this chapter; and

(ii) except as provided in Subsection (1)(b), remit with the return required by Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax, fee, or charge described in Subsection (1)(c):

(A) if that seller's tax liability under this chapter for the previous calendar year is less than \$96,000, by any method permitted by the commission; or

(B) if that seller's tax liability under this chapter for the previous calendar year is \$96,000 or more, by electronic funds transfer.

(b) A seller shall remit electronically with the return required by Subsection (1)(a)(i) the amount the seller is required to remit to the commission for each tax, fee, or charge described in Subsection (1)(c) if that seller:

(i) is required by Section 59-12-107 to file the return electronically; or

(ii) (A) is required to collect and remit a tax under Subsection 59-12-107(1)(a); and

(B) files a simplified electronic return.

(c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:

(i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(ii) a fee under Section 19-6-716;

(iii) a fee under Section 19-6-805;

(iv) a charge under Section 69-2-5;

(v) a charge under Section 69-2-5.5;

(vi) a charge under Section 69-2-5.6; or

(vii) a tax under this chapter.

(d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for a method for making same-day payments other than by electronic funds transfer if making payments by electronic funds transfer fails.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall establish by rule procedures and requirements for determining the amount a seller is required to remit to the commission under this Subsection (1).

(2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month the amount allowed by this Subsection (2).

1547 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1548 each month 1.31% of any amounts the seller is required to remit to the commission:

1549 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
1550 and a local tax imposed in accordance with the following, for the month for which the seller is
1551 filing a return in accordance with Subsection (1):

1552 (A) Subsection 59-12-103(2)(a);

1553 (B) Subsection 59-12-103(2)(b); and

1554 (C) Subsection 59-12-103(2)(d); and

1555 (ii) for an agreement sales and use tax.

1556 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
1557 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
1558 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
1559 accordance with Subsection 59-12-103(2)(c).

1560 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
1561 equal to the sum of:

1562 (A) 1.31% of any amounts the seller is required to remit to the commission for:

1563 (I) the state tax and the local tax imposed in accordance with Subsection
1564 59-12-103(2)(c);

1565 (II) the month for which the seller is filing a return in accordance with Subsection (1);
1566 and

1567 (III) an agreement sales and use tax; and

1568 (B) 1.31% of the difference between:

1569 (I) the amounts the seller would have been required to remit to the commission:

1570 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
1571 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

1572 (Bb) for the month for which the seller is filing a return in accordance with Subsection
1573 (1); and

1574 (Cc) for an agreement sales and use tax; and

1575 (II) the amounts the seller is required to remit to the commission for:

1576 (Aa) the state tax and the local tax imposed in accordance with Subsection
1577 59-12-103(2)(c);

1578 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
1579 and

1580 (Cc) an agreement sales and use tax.

1581 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1582 each month 1% of any amounts the seller is required to remit to the commission:

1583 (i) for the month for which the seller is filing a return in accordance with Subsection
1584 (1); and

1585 (ii) under:

1586 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1587 (B) Title 17, Chapter 6, County Energy Sales and Use Tax Act;

1588 [~~(B)~~] (C) Subsection 59-12-603(1)(a)(i)(A); or

1589 [~~(C)~~] (D) Subsection 59-12-603(1)(a)(i)(B).

1590 (3) A state government entity that is required to remit taxes monthly in accordance
1591 with Subsection (1) may not retain any amount under Subsection (2).

1592 (4) A seller that has a tax liability under this chapter for the previous calendar year of
1593 less than \$50,000 may:

1594 (a) voluntarily meet the requirements of Subsection (1); and

1595 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1596 amounts allowed by Subsection (2).

1597 (5) Penalties for late payment shall be as provided in Section 59-1-401.

1598 (6) (a) Except as provided in Subsection (6)(c), for any amounts required to be remitted
1599 to the commission under this part, the commission shall each month calculate an amount equal
1600 to the difference between:

1601 (i) the total amount retained for that month by all sellers had the percentages listed
1602 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

1603 (ii) the total amount retained for that month by all sellers at the percentages listed
1604 under Subsections (2)(b) and (2)(c)(ii).

1605 (b) The commission shall each month allocate the amount calculated under Subsection
1606 (6)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
1607 tax that the commission distributes to each county, city, and town for that month compared to
1608 the total agreement sales and use tax that the commission distributes for that month to all

counties, cities, and towns.

(c) The amount the commission calculates under Subsection (6)(a) may not include an amount collected from a tax that:

(i) the state imposes within a county, city, or town, including the unincorporated area of a county; and

(ii) is not imposed within the entire state.

Section 27. Section **59-12-128** is amended to read:

59-12-128. Amnesty.

(1) As used in this section, "amnesty" means that a seller is not required to pay the following amounts that the seller would otherwise be required to pay:

(a) a tax, fee, or charge under:

(i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(iii) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;

(iv) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;

~~[(iii)]~~ (v) Section 19-6-714;

~~[(iv)]~~ (vi) Section 19-6-805;

~~[(v)]~~ (vii) Section 69-2-5;

~~[(vi)]~~ (viii) Section 69-2-5.5;

~~[(vii)]~~ (ix) Section 69-2-5.6; or

~~[(viii)]~~ (x) this chapter;

(b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or

(c) interest on a tax, fee, or charge described in Subsection (1)(a).

(2) The commission shall grant a seller amnesty under this section if the seller:

(a) was not licensed under Section 59-12-106 at any time during the 12-month period prior to the effective date of the state's participation in the agreement;

(b) obtains a license under Section 59-12-106 within a 12-month period after the effective date of the state's participation in the agreement; and

(c) is registered under the agreement.

(3) A seller may not receive amnesty under this section for a tax, fee, or charge:

(a) the seller collects;

1640 (b) the seller remits to the commission;

1641 (c) that the seller is required to remit to the commission on the seller's purchase; or

1642 (d) arising from a transaction that occurs within a time period that is under audit by the

1643 commission if:

1644 (i) the seller receives notice of the commencement of the audit prior to obtaining a

1645 license under Section 59-12-106; and

1646 (ii) (A) the audit described in Subsection (3)(d)(i) is not complete; or

1647 (B) the seller has not exhausted all administrative and judicial remedies in connection

1648 with the audit described in Subsection (3)(d)(i).

1649 (4) (a) Except as provided in Subsection (4)(b), amnesty the commission grants to a

1650 seller under this section:

1651 (i) applies to the time period during which the seller is not licensed under Section

1652 59-12-106; and

1653 (ii) remains in effect if, for a period of three years, the seller:

1654 (A) remains registered under the agreement;

1655 (B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge

1656 described in Subsection (1)(a); and

1657 (C) remits to the commission the taxes, fees, and charges the seller collects in

1658 accordance with Subsection (4)(a)(ii)(B).

1659 (b) The commission may not grant a seller amnesty under this section if, with respect

1660 to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this

1661 section, the seller commits:

1662 (i) fraud; or

1663 (ii) an intentional misrepresentation of a material fact.

1664 (5) (a) If a seller does not meet a requirement of Subsection (4)(a)(ii), the commission

1665 shall require the seller to pay the amounts described in Subsection (1) that the seller would

1666 have otherwise been required to pay.

1667 (b) Notwithstanding Section 59-1-1410, for purposes of requiring a seller to pay an

1668 amount in accordance with Subsection (5)(a), the time period for the commission to make an

1669 assessment under Section 59-1-1410 is extended for a time period beginning on the date the

1670 seller does not meet a requirement of Subsection (4)(a)(ii) and ends three years after that date.

Section 28. Section **72-7-102** is amended to read:

72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty for violation.

(1) As used in this section, "management costs" means the reasonable, direct, and actual costs a highway authority incurs in exercising authority over the highways under its jurisdiction.

(2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

(a) dig or excavate, within the right-of-way of any state highway, county road, or city street; or

(b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the right-of-way.

(3) (a) A highway authority having jurisdiction over the right-of-way may allow excavating, installation of utilities and other facilities or access under rules made by the highway authority and in compliance with federal, state, and local law as applicable.

(b) (i) The rules may require a permit for any excavation or installation and may require a surety bond or other security.

(ii) The application for a permit for excavation or installation on a state highway shall be accompanied by a fee established under Subsection (4)(f).

(iii) The permit may be revoked and the surety bond or other security may be forfeited for cause.

(4) (a) Except as provided in Section 72-7-108 with respect to the department concerning the interstate highway system, a highway authority may require compensation from a utility service provider for access to the right-of-way of a highway only as provided in this section.

(b) A highway authority may recover from a utility service provider, only those management costs caused by the utility service provider's activities in the right-of-way of a highway under the jurisdiction of the highway authority.

(c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a competitively neutral basis.

(ii) If a highway authority's management costs cannot be attributed to only one entity, the management costs shall be allocated among all privately owned and government agencies using the highway right-of-way for utility service purposes, including the highway authority itself. The allocation shall reflect proportionately the management costs incurred by the highway authority as a result of the various utility uses of the highway.

(d) A highway authority may not use the compensation authority granted under this Subsection (4) as a basis for generating revenue for the highway authority that is in addition to its management costs.

(e) (i) A utility service provider that is assessed management costs or a franchise fee by a highway authority is entitled to recover those management costs.

(ii) If the highway authority that assesses the management costs or franchise fees is a political subdivision of the state and the utility service provider serves customers within the boundaries of that highway authority, the management costs may be recovered from those customers.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall adopt a schedule of fees to be assessed for management costs incurred in connection with issuing and administering a permit on a state highway under this section.

(g) In addition to the requirements of this Subsection (4), a telecommunications tax or fee imposed:

(i) by a municipality on a telecommunications provider, as defined in Section 10-1-402, is subject to Section 10-1-406[-]; or

(ii) by a county on a telecommunications provider, as defined in Section 17-50-702, is subject to Section 17-50-706.

(5) Permit fees collected by the department under this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(6) Nothing in this section shall affect the authority of:

(a) a municipality under:

~~[(a)]~~ (i) Section 10-1-203;

~~[(b)]~~ (ii) Section 11-26-1;

~~[(c)]~~ (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

~~[(d)]~~ (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax

Act[-]; or

(b) a county under:

(i) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act; or

(ii) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act.

(7) A person who violates the provisions of Subsection (2) is guilty of a class B misdemeanor.

Section 29. Section **72-7-108** is amended to read:

72-7-108. Longitudinal telecommunication access in the interstate highway system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.

(1) As used in this section:

(a) "Longitudinal access" means access to or use of any part of a right-of-way of a highway on the interstate system that extends generally parallel to the right-of-way for a total of 30 or more linear meters.

(b) "Statewide telecommunications purposes" means the further development of the statewide network that meets the telecommunications needs of state agencies and enhances the learning purposes of higher and public education.

(c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, and device used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical signal for communication purposes.

(2) (a) Except as provided in Subsection (4), the department may allow a telecommunication facility provider longitudinal access to the right-of-way of a highway on the interstate system for the installation, operation, and maintenance of a telecommunication facility.

(b) The department shall enter into an agreement with a telecommunication facility provider and issue a permit before granting it any longitudinal access under this section.

(i) Except as specifically provided by the agreement, a property interest in a right-of-way may not be granted under the provisions of this section.

(ii) An agreement entered into by the department under this section shall:

(A) specify the terms and conditions for the renegotiation of the agreement;

1764 (B) specify maintenance responsibilities for each telecommunication facility;
1765 (C) be nonexclusive; and
1766 (D) be limited to a maximum term of 30 years.

1767 (3) (a) The department shall require compensation from a telecommunication facility
1768 provider under this section for longitudinal access to the right-of-way of a highway on the
1769 interstate system.

1770 (b) The compensation charged shall be:

1771 (i) fair and reasonable;
1772 (ii) competitively neutral;
1773 (iii) nondiscriminatory;
1774 (iv) open to public inspection;
1775 (v) established to promote access by multiple telecommunication facility providers;
1776 (vi) established for zones of the state, with zones determined based upon factors that
1777 include population density, distance, numbers of telecommunication subscribers, and the
1778 impact upon private right-of-way users;

1779 (vii) established to encourage the deployment of digital infrastructure within the state;
1780 (viii) set after the department conducts a market analysis to determine the fair and
1781 reasonable values of the right-of-way based upon adjacent property values;

1782 (ix) a lump sum payment or annual installment, at the option of the
1783 telecommunications facility provider; and

1784 (x) set in accordance with Subsection (3)(f).

1785 (c) (i) The compensation charged may be cash, in-kind compensation, or a combination
1786 of cash and in-kind compensation.

1787 (ii) In-kind compensation requires the agreement of both the telecommunication
1788 facility provider and the department.

1789 (iii) The department shall, in consultation with the Telecommunications Advisory
1790 Council created in Section 72-7-109, determine the present value of any in-kind compensation
1791 based upon the incremental cost to the telecommunication facility provider.

1792 (iv) The value of in-kind compensation or a combination of cash and in-kind
1793 compensation shall be equal to or greater than the amount of cash compensation that would be
1794 charged if the compensation is cash only.

(d) (i) The department shall provide for the proportionate sharing of costs among the department and telecommunications providers for joint trenching or trench sharing based on the amount of conduit innerduct space that is authorized in the agreement for the trench.

(ii) If two or more telecommunications facility providers are required to share a single trench, each telecommunications facility provider in the trench shall share the cost and benefits of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively neutral, and nondiscriminatory basis.

(e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every five years and any adjustments warranted shall apply only to agreements entered after the date of the new market analysis.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish a schedule of rates of compensation for any longitudinal access granted under this section.

(4) The department may not grant any longitudinal access under this section that results in a significant compromise of the safe, efficient, and convenient use of the interstate system for the traveling public.

(5) The department may not pay any cost of relocation of a telecommunication facility granted longitudinal access to the right-of-way of a highway on the interstate system under this section.

(6) (a) Monetary compensation collected by the department in accordance with this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(b) Any telecommunications capacity acquired as in-kind compensation shall be used:

(i) exclusively for statewide telecommunications purposes and may not be sold or leased in competition with telecommunication or Internet service providers; and

(ii) as determined by the department after consultation with the Telecommunications Advisory Council created in Section 72-7-109.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:

(a) governing the installation, operation, and maintenance of a telecommunication facility granted longitudinal access under this section;

(b) specifying the procedures for establishing an agreement for longitudinal access for

1826 a telecommunication facility provider;

1827 (c) providing for the relocation or removal of a telecommunication facility for:

1828 (i) needed changes to a highway on the interstate system;

1829 (ii) expiration of an agreement; or

1830 (iii) a breach of an agreement; and

1831 (d) providing an opportunity for all interested providers to apply for access within open

1832 right-of-way segments.

1833 (8) (a) Except for a right-of-way of a highway on the interstate system, nothing in this

1834 section shall be construed to allow a highway authority to require compensation from a

1835 telecommunication facility provider for longitudinal access to the right-of-way of a highway

1836 under the highway authority's jurisdiction.

1837 (b) Nothing in this section shall affect the authority of a municipality under:

1838 (i) Section 10-1-203;

1839 (ii) Section 11-26-1;

1840 (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

1841 (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

1842 (c) Nothing in this section shall affect the authority of a county under:

1843 (i) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act; or

1844 (ii) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act.

1845 (9) Compensation paid to the department under Subsection (3) may not be used by any

1846 person as evidence of the market or other value of the access for any other purpose, including

1847 condemnation proceedings, other litigation, or the application of rates of taxation or the

1848 establishment of franchise fees relating to longitudinal access rights.

Legislative Review Note
as of 2-11-11 7:38 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 284

SHORT TITLE: **County Tax Amendments**

SPONSOR: **Stevenson, J.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill could increase local revenue by up to \$8,000,000 in FY 2012 and \$8,300,000 in FY 2013.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill could increase individuals and business costs between \$3.50 and \$9.50 for every \$100 spent on energy or telecommunications related purchases.